(2)

Supreme Court, U.S.
FILED
JUL 17 1995
CLERK

CASE NO. 94-2046

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

ROY E. SCHROCK,
Petitioner,

v.

TERRY L. MORRIS, Warden,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BETTY D. MONTGOMERY
Attorney General of Ohio

DAVID J. KOVACH (0059431)
Assistant Attorney General
Counsel of Record
State Office Building
615 West Superior Ave., 12th Fl.
Cleveland, Ohio 44113-1899
(216) 787-3030

COUNSEL FOR RESPONDENT

BEST AVAILABLE COPY

QUESTION PRESENTED

Where the totality of the circumstances exist to analyze the voluntariness of a confession and this can be easily demonstrated, can a defendant later make a claim that the confession was given involuntarily in violation of his constitutional rights?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE 2

REASONS FOR NOT GRANTING THE WRIT 2

THE UNITED STATES SIXTH CIRCUIT COURT OF APPEALS PROPERLY APPLIED THE TEST FOR THE TOTALITY OF THE CIRCUMSTANCES WITH REGARD TO A CLAIM OF INVOLUNTARY CONFESSION AND ITS THREE-PRONG TEST FOR SUCH DETERMINATION PASSES CONSTITUTIONAL MUSTER. 2

CONCLUSION 3

TABLE OF AUTHORITIES

CASES — Page(s)

Arizona v. Fulminante,
499 U.S. 279 (1991) 2

Colorado v. Connelly,
479 U.S. 157 (1986) 2

McCall v. Dutton,
863 F.2d 454 (6th Cir. 1988)
cert. denied 490 U.S. 1020 (1989) 2

CASE NO. 94-2046

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

ROY E. SCHROCK,
Petitioner,

v.

TERRY L. MORRIS, Warden,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The respondent, Terry L. Morris, prays that a writ of certiorari will not issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, which was entered in this proceeding on March 15, 1995, affirming the judgment of the District Court denying petitioner's writ of habeas corpus.

STATEMENT OF THE CASE

Respondent submits that further clarification is not necessary.

REASONS FOR NOT GRANTING THE WRIT

THE UNITED STATES SIXTH CIRCUIT COURT OF APPEALS PROPERLY APPLIED THE TEST FOR THE TOTALITY OF THE CIRCUMSTANCES WITH REGARD TO A CLAIM OF INVOLUNTARY CONFESSION AND ITS THREE-PRONG TEST FOR SUCH DETERMINATION PASSES CONSTITUTIONAL MUSTER.

This Court held in *Colorado v. Connelly*, 479 U.S. 157, 167 (1986), "that coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." In the case at bar, there was no coercive police activity.

Later in *Arizona v. Fulminante*, 499 U.S. 279 (1991), this Court found that the Arizona Supreme Court had properly viewed Fulminante's confession in a totality of the circumstances. The state court found that Fulminante's confession was coerced by the government agent and that Fulminante's will was overborne. Petitioner cannot show any coercion by a government agent and barring that, Petitioner cannot show that his will was overborne.

The Sixth Circuit also applied the totality of the circumstances analysis in its finding that Petitioner's confession was not given involuntarily. In *McCall v. Dutton* 863 F.2d 454, 459 (6th Cir. 1988) *cert. denied* 490 U.S. 1020 (1989), the Sixth Circuit defined a three part test in order to determine the voluntariness of a confession. First, it must be determined that the police activity was objectively coercive. Once the first prong is met, the second test is to examine petitioner's subjective state of mind in order to determine whether the "coercion" in question was sufficient to overbear the will of the accused. Finally, petitioner must prove that his will was overborne because of the coercive police activity in question.

The *McCall* court further stated confessions will not be suppressed if the police conduct at issue was not the "crucial motivating factor" behind petitioner's decision to confess. Therefore, the failure to satisfy the first prong is fatal to a claim of involuntary confession and the court will not look to the other prongs.

The Sixth Circuit correctly held based upon the evidence present in this case that Petitioner's confession was not coerced but that it was voluntarily given. Thus, Petitioner has not satisfied the first prong of the *McCall v. Dutton* test and accordingly has not established an involuntary confession. Moreover, Petitioner has neither satisfied the condition of *Colorado v. Connelly* to show coercion; nor can he defeat the totality of the circumstances analysis under *Arizona v. Fulminante*.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that a writ of certiorari not be issued to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully Submitted,

BETTY D. MONTGOMERY
Attorney General

David J. Kovach (002117)
Assistant Attorney General
Counsel of Record
State Office Building
615 West Superior Ave., 12th Fl.
Cleveland, Ohio 44113-1899
(216) 787-3030

COUNSEL FOR RESPONDENT

July 17, 1995